

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1592V

(not to be published)

LISA SINKO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 30, 2020

Special Processing Unit (SPU);
Attorney's Fees and Costs

Scott William Rooney, Nemes Rooney, P.C., Farmington, Hills, MI, for Petitioner.

Catherine Elizabeth Stolar, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On October 15, 2018, Lisa Sinko filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleges that she suffered shoulder injury related to vaccine administration as the result of an influenza vaccine she received. (Petition at 1). On March 26, 2020, a decision was issued awarding compensation to Petitioner based on the parties' stipulation. (ECF No. 34).

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner has now filed a motion for attorney's fees and costs, dated February 24, 2020 (ECF No. 30), requesting a total award of \$8,434.73 (representing \$8,028.50 in fees and \$406.23 in costs). In accordance with General Order #9, counsel for Petitioner represents that Petitioner has incurred out-of-pocket expenses in the amount of \$96.67. (*Id.* at 2).³ Respondent reacted to the motion on February 25, 2020, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case and defers to the Court's discretion to determine the amount to be awarded. (ECF No. 31). Petitioner did not file a reply thereafter.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Human Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. at 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Id.* at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S., at 434.

ATTORNEY FEES

³ Counsel for Petitioner included copies of checks written by Petitioner for medical records filed in this case. (ECF No. 30 at 12 – 13).

Petitioner requests the following rates of compensation for the work of his attorney Mr. Scott Rooney at \$350 an hour for time billed from 2018 – 2019. (ECF No. 30 at 2). The rates requested are consistent with what has been previously awarded to Mr. Rooney for his work in the Vaccine Program. Accordingly, no adjustment to these requested rates is necessary. For time billed in 2020, Mr. Rooney is requesting the increased rate of \$380 per hour. Mr. Rooney has not requested for an hourly rate increase since 2018. Due to this fact and based on my experience (which takes into account the high quality of work performed by present counsel), I find the requested increase for time billed in 2020 to be reasonable and award it herein.

ATTORNEY COSTS

Petitioner requests \$406.23 in costs incurred by Mr. Rooney, and \$96.67 in personally incurred costs. (ECF No. 30). This amount includes costs associated with obtaining medical records, shipping costs, and the Court's filing fee. I have reviewed the requested costs and find them to be reasonable, and therefore award the requested amount in full.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorney fees and costs as follows:

- **A lump sum of \$8,434.73, representing reimbursement for attorney's fees and costs, in the form of a check payable jointly to Petitioner and Petitioner's counsel and;**
- **A lump sum of \$96.67, representing reimbursement for Petitioner's costs, in the form of a check payable to Petitioner.**

In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.